

KF9350 E7
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GEORGIA STATE UNIVERSITY
COLLEGE OF LAW
WHITE COLLAR CRIME

FINAL EXAMINATION
FALL 1991

PROFESSOR ELLEN S. PODGOR
TIME LIMIT: 3 HOURS

1. This examination is a three (3) hour open book examination. You may have your textbook, materials purchased at Kinko's as required for this course, class notes, and any handwritten or handtyped materials which you have obtained or constructed throughout this semester. There are five (5) pages to this examination. Please make certain that you have all the pages.
2. Each section states the approximate weight assigned in deriving the grade for the entire examination.
3. There are three (3) parts to this examination. Please answer each of the three (3) parts in separate blue books. (Subparts may be in the same blue book). You may use as many blue books as you need. You may use both sides of the pages in the blue books as well as every line.
4. Although sufficient time has been provided to properly complete this examination, should you find that you have insufficient time to finish any of the three (3) parts, it is recommended that you list or outline all issues that you would have expounded upon if time had permitted.
5. Please make certain that your anonymous number (exam number) appears on every blue book and on this examination. Turn in blue books and the examination.

IN TAKING THIS EXAMINATION YOU ARE REQUIRED TO COMPLY WITH THE
SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS.

PART ONE

SUGGESTED TIME: Thirty-five (35) Minutes (Approximately 20% of Grade)

Attorney Juliet, a corporate attorney, received in excess of ten thousand (\$10,000) dollars in cash from client Brutus for future legal work. She failed to file Form 8300 as required by Section 6050I of the Tax Code and is indicted by United States Attorney Julius Caesar. The government indictment alleges two counts: Conspiracy (§ 371) and Willful Failure to File Return (§ 7203).

You have been appointed as the public defender to represent Attorney Juliet. In her initial interview, she says, "Gosh, if I'd known the rule, I might have complied. I guess I would have needed to research my legal responsibilities as an attorney. But, I just never heard of § 6050I or Form 8300."

Discuss the arguments that can be made on behalf of Attorney Juliet. Include in your discussion the likelihood of these legal arguments being successful.

(If your answer is contingent upon information not provided, explain what that information is and how it would affect your response.)

PART TWO

SUGGESTED TIME: Eighty-five (85) Minutes (Approximately 45% of the Grade)

Solomon Poodel, formerly a judge of the Animal County Court, has been convicted after a jury trial of the following crimes: Count 1 - Obstruction of Justice (§ 1503), Count 2 - False Statements (§ 1001), Count 3 - Perjury (§ 1621) and Count 4 - False Declarations (§ 1623) and Count 5 - Mail Fraud (§ 1341). Count 1 alleged that Judge Solomon Poodel's testimony at the trial of Morris Katz impeded the due administration of justice. Counts 2-4 pertain to the truthfulness of the testimony provided by Judge Solomon Poodel at the trial of Morris Katz. Count 5 pertains to Judge Solomon Poodel's scheme to defraud the citizenry of Animal County of their right to honest services.

The following is a summary of the evidence at Judge Poodel's trial.

Judge Solomon Poodel was subpoenaed to testify as a defense witness at the trial of Morris Katz. Morris Katz, a bailiff, was on trial for various federal crimes, including racketeering, mail fraud, and extortion resulting from an alleged ticket fixing scheme operating within the Animal County court system. The jury convicted Morris Katz of all charges brought by the government.

Morris Katz' attorney subpoenaed Judge Poodel to testify in the Katz trial as seven of the twelve cases allegedly "fixed" by Katz concerned cases pending while Poodel was the presiding judge. On direct examination, Judge Poodel testified in general terms concerning the operations and procedures of his court. On cross-examination, the government asked Judge Poodel if he had ever disposed of a case in his chambers without the presence of a prosecutor. Poodel replied, "No, No. Always prosecutors there." At the conclusion of the Katz trial, the government offered evidence contrary to this statement to a grand jury and Judge Poodel was subsequently indicted. Judge Poodel was not subpoenaed and did not testify before the Grand Jury which indicted him.

At Judge Poodel's trial, the government offered evidence that of the approximately 34,000 cases handled by Judge Poodel during this period of time, there were eight cases in which guilty pleas to the charge of Driving Under the Influence (DUI) were taken by Judge Poodel in his chambers without the presence of a prosecutor. Judge Poodel testified at his trial that

he had no specific recollection of these eight cases, and he had obviously misspoken, in what he termed an honest mistake.

The government's evidence included testimony that these eight defendants were friends of political contributors to the judge's campaign re-election fund. The evidence also demonstrated that each of the eight defendants received minimal fines, no term of imprisonment, a short suspension of their drivers' licenses and an order to attend alcohol abuse school. Animal County Statutes permit the sentences ordered by Judge Poodel for the crime of Driving Under the Influence.

The government presented evidence to the effect that letters were mailed to the eight defendants who pled guilty to the charge of Driving Under the Influence. These letters, mailed by Judge Poodel's secretary after the submission of the guilty plea, informed the eight defendants of where to report for schooling on alcohol abuse.

The government and defense at Solomon Poodel's trial stipulated to the fact that the eight Driving Under the Influence cases were adversarial cases. That is, on one side is the prosecuting attorney on behalf of Animal County, and, on the other side is the defendant charged with the particular offense.

At the end of Solomon Poodel's trial, the court's instructions to the jury included a passage from the Code of Judicial Conduct. The instruction read as follows:

A judge should accord to every person who is legally interested in the proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

The term ex parte means without the other party. An ex parte proceeding, therefore, is any judicial proceeding at which only one party is present.

Discuss in detail the legal arguments that can be raised by Poodel in his appeal and the likelihood of these arguments being successful.

(If your answer is contingent upon information not provided, explain what that information is and how it would affect your response.)

PART THREE

SUGGESTED TIME: Sixty (60) Minutes (Approximately 35% of Grade)

You have just been appointed an Assistant United States Attorney. The following is a digest of the evidence presented to you by an FBI agent.

Dan Pheasant is the President of Pheasant Unlimited, a national manufacturing company that is located adjacent to the Duck River. Sandy Berry, employed for one year with the County Health Department, inspected the premises of Pheasant Unlimited four times this past year to determine if the company was in violation of any health regulations. After each of Sandy Berry's visits, Dan Pheasant received a letter from the County Health Department informing him of the company's full compliance with health regulations. After each of the four (4) favorable results, Dan Pheasant mailed to Sandy Berry an envelope with two hundred (\$200) dollars. He enclosed a note thanking Sandy Berry for the favorable results on the company's health inspections. The note stated that this money was not intended to influence Sandy Berry on future inspections, but rather was provided to make certain that good inspectors like Sandy Berry remain on the job, despite the poor salaries provided by the county. Pheasant waited three days after mailing each note and called the County Health Department to make certain that the envelope had been received. The FBI, in investigating this case, inspected the premises of Pheasant Unlimited and found that there were no health violations. This case came to the attention of the FBI by a telephone call from George Tree. George Tree, recently fired from the County Health Department by his supervisor, Sandy Berry, told the FBI agent that Sandy Berry was accepting "thousands of dollars from Dan Pheasant."

- A. What, if any, federal charges can you bring against Dan Pheasant, Sandy Berry and George Tree? Include in your answer all possible offenses that can be brought against each of these three individuals. (Note - Discuss each individual separately. You are welcome to discuss your reasons for excluding certain charges that you think may be questionable.)
- B. What, if any, legal issues do you anticipate arising if these individuals are indicted on all of the charges?
- C. What, if any, federal charges would you, as an Assistant United States Attorney, bring against Pheasant, Berry and Tree? If the charges chosen are not all of the charges you presented in answer to question A above, explain why you would not bring certain charges against these individuals. If the charges you would bring as an Assistant United States Attorney are in fact all of the charges which you listed in answer to question A, explain why you feel it is correct to proceed on all charges.

(If your answer is contingent upon information not provided, explain what that information is and how it would affect your response.)